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DEPARTMENT OF CONSUMER AFFAIRS
SUBSTANCE ABUSE COORDINATION COMMITTEE

MEETING MINUTES

MONDAY, APRIL 23, 2018

Meeting Date:	Monday, April 23, 2018, at 10:00AM
Location:	1747 North Market Blvd., 1st Floor Hearing Room Sacramento, CA 95834

AGENDA

I. Call to Order, Establishment of Quorum

Director Grafilo called the meeting to order at 10:05 a.m., April 23, 2018.

Director Grafilo thanked those in attendance for coming to the meeting and provided a refresher on the SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) mandates as well as the SB 796 mandates (Hill, Chapter 600, Statutes of 2017).

Director Grafilo introduced committee staff:

- Kurt Heppler, DCA and Committee Legal Counsel
- Patrick Le, DCA
- Alana Bui, DCA

Mr. Le conducted roll call of executive officers and other required parties in order to establish a quorum.

Committee Members Present:

- Benjamin Bodea, Acupuncture Board
- Kim Madsen, Board of Behavioral Sciences
- Robert Puleo, Board of Chiropractic Examiners
- Karen Fischer, Dental Board of California
- Kim Kirchmeyer, Medical Board of California
- Rebecca Mitchell, Naturopathic Medicine Committee
- Heather Martin, California Board of Occupational Therapy
- Angie Burton, Osteopathic Medical Board of California
- Virginia Herold, Board of Pharmacy
- Jason Kaiser, Physical Therapy Board of California
- Antonette Sorrick, Board of Psychology
- Dr. Joseph Morris, Board of Registered Nursing
- Stephanie Nunez, Respiratory Care Board
- Paul Sanchez, Speech-Language Pathology, Audiology & Hearing Aid Dispensers Board
- Elaine Yamaguchi, Board of Vocational Nursing and Psychiatric Technicians
- Michele Wong, Department of Health Care Services

Committee Members Absent:

- Anthony Lum, Dental Hygiene Committee of California
- Jessica Sieferman, Board of Optometry
- Lynn Forsyth, Physician Assistant Board
- Brian Naslund, Board of Podiatric Medicine
- Ethan Mathes, Veterinary Medical Board

Director Grafilo determined quorum was established; Kurt Heppler directed committee to proceed.

II. Director's Welcome and Introductions

Director Grafilo provided a refresher on the purpose and scope of the committee. In 2008, SB 1441 established the Substance Abuse Coordination Committee, which was tasked with developing Uniform Standards for dealing with substance-abusing licensees under the healing arts boards. In 2011, the Uniform Standards were developed.

SB 796, which was chaptered into law last year, requires the department to

reconvene the committee and review Uniform Standard #4 on drug testing and report back to the legislature by January 1, 2019. The committee is tasked to review Uniform Standard #4 and determine whether the existing criteria should be updated to reflect recent developments in testing research and technology.

Director Grafilo thanked the healing arts executive officers for their participation in the committee and the following experts who have attended the committee meeting to provide context, institutional knowledge, and data to help with the conversation:

- Kerry Parker, Executive Director of the California Society of Addiction Medicine
- Dr. Karen Miotto, Chair of CSAM's Committee on Physician Wellbeing
- Dr. Greg Skipper, Medical Director of the Center for Professional Recovery

III. Public Comments on Items Not on the Agenda

Note: The committee may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting.

No public comments were provided for this agenda item.

IV. Development of the Uniform Standards and Overview of Current Uniform Standard #4

Director Grafilo introduced Stephanie Nunez, Executive Officer for the Respiratory Care Board of California. Ms. Nunez was the chair of the 2010 Uniform Standard #4 subcommittee and played an instrumental role in drafting the standard related to all aspects of drug testing.

Stephanie Nunez presented to the committee.

She stated that the issue began in 2008 with SB 1441; result of sunset review hearing. The impetus for the bill was the immediate and grave risk to the public posed by licensees who continued to practice despite their chemical dependencies, and weak diversion programs. The discussion, summary, and intent of the bill was targeted solely around boards with diversion programs. The actual language enacted did not make this same distinction and all healing arts boards, even those without diversion programs, were included in SB 1441.

Ms. Nunez provided background on the 2009 Department of Consumer Affairs (DCA) Substance Abuse Coordination Committee. DCA met the legislation's timeline in establishing the uniform standards in January 2010. At that time, several boards expressed concern for Uniform Standard #4's requirement for testing 104 times annually. Thus, a subcommittee was created to review uniform standard #4.

Revised standards were adopted in 2011. Legal opinions were sought, with conflicting opinions being provided by the Office of the Attorney General and the Legislative Counsel Bureau. DCA Legal Affairs provided a guidance document in 2016. In the review of standard #4, several comments/concerns were raised by interested parties including appropriate testing for diversion participants; those working/not working, financial burden, public protection, and randomness of testing. In 2011, revised language for standard #4 was adopted which provides for frequency, exceptions, and other drug standards.

Ms. Nunez stated that there are data collection requirements under the standard for a period of two years prior to implementation and three years after implementation, with the understanding that the standard would be revisited to determine its effectiveness. Data is unique to each probationer which makes it difficult to summarize. Ms. Nunez stated that Uniform Standard #16 also has similar data requirements; so that is something for the department to consider. The Respiratory Care Board (RCB) was able to modify BreEZe to capture this data. However, she reiterated that because of the data's uniqueness, it is challenging to place it into a succinct report. So far, the legislature has not requested the detailed data for RCB.

There were no comments from members of the committee nor the public on this agenda item.

V. Discussion of Boards' Efforts and Actions to Address Substance Abusing Licensees

a. Boards Utilizing Contracted Diversion Services

Director Grafilo introduced Virginia Matthews, Project Manager at MAXIMUS California Health Professionals Diversion Program which is the current contractor for the participating boards.

Ms. Matthews presented to the committee.

She provided an overview of current diversion programs. She stated that she has been in her position for over 10 years and was involved before, during, and after implementation of the uniform standards. Ms. Matthews noted that it is important to look at the intent of SB 1441, as licensing boards were not consistent with dealing with substance abusing licensees. The Legislature believed that patients and the public would be better protected if there were standards that could improve coordination across all boards.

Ms. Matthews stated that while the standards may not be popular with all clinicians, there are positive aspects that provide for consistency, that considers best practices, and brings accountability. Some concerns expressed by interested parties are that the standards are confusing and contradictory, punitive instead of rehabilitative, and difficult to implement.

Ms. Matthews went on to discuss some practical considerations for updating Uniform Standard #4. For example, addressing confusion around scheduling drug tests. A possible recommendation was to define an acceptable testing frequency, utilizing evidenced-based best practices which takes into consideration individual case history and clinical considerations. Additionally, in regard to drug testing on holidays, a recommendation was made to define an acceptable alternative process for when observed collections are not available, and how to ensure observed testing. Finally, regarding the ability of a participant to travel, a recommendation was made to define an acceptable alternative process that would take into consideration alternative testing methods when out-of-state.

Ms. Matthews also provided a breakdown of the cost associated with the various types of tests provided by MAXIMUS, which she noted is not reflective for any other testing providers. The cost breakdown included random urine, hair, and PEth. Costs range from \$3,600 to \$10,400 per year for urine tests; cost are higher for hair and PEth tests and are not done on a routine basis. Hair and PEth test are done upon entry and before graduation and throughout program participation. Additional program costs include support groups, treatment, intensive assessment, and administrative fee, which varies by board.

Ms. Matthews explained that MAXIMUS is seeing enrollment at an all-time low with self-referrals dropping from 107 in 2009 to 38 in fiscal year 2017 – a 75 percent drop over 9-year period. Overall, all referral types have dropped. Ms. Matthews stated that the tipping time appears to be when the standards were released, but cautions that correlation does not equate to causation. Ms. Matthews discussed

MAXIMUS' relapse rate over a 5-year period which is 13 percent and stated that there is value in the program.

Committee comments:

Committee member Virginia Herold inquired about possible indicators for the decrease in self-referrals, and links to the current opioid crisis in the country.

Committee member Angie Burton shared an anecdote that a diversion participant surrendered license when the participant found out the overall cost of drug testing and diversion. She also stated that cost of testing may be associated with barriers to entry.

Mr. Heppler clarified that not every participant pays the same. Some boards carry the costs, but in other programs, licensees carry the costs.

Public comments:

Julie D'Angelo Fellmeth: Ms. Fellmeth introduced herself as an attorney with the Center for Public Interest Law for the University of San Diego School of Law which track and monitor regulatory agencies which regulate business trades and industries provided background on Uniform Standard #4. Ms. Fellmeth explained that the issue arose because of the failure of the Medical Board of California's diversion program. The program failed three audits. Ms. Fellmeth served as the Medical Board's enforcement monitor, and was tasked with the Medical Board of California's diversion program audit. Audit issued in 2004 became fourth failed audit. Bureau of State Audits came back and led MBC to unanimously agree in 2007 to abolish the program. Following a 2008 legislative hearing, SB 1441 became law, which requires the department to set uniform standards that healing arts boards shall use whether or not they have diversion programs. Ms. Fellmeth explained that the Uniform Standards didn't come from nowhere, and further explained that some standards may be inconvenient, but the purpose of boards is protection, not convenience.

Mary Haggerty: Ms. Haggerty introduced herself as a Registered Nurse (RN), working as RN since 1961. Board of Registered Nursing, probation program and intervention program. She is currently working in the substance abuse program,

and was a former owner/operator of an intensive substance abuse program. Ms. Haggerty teaches addiction, recovery and relapse prevention classes. Ms. Haggerty stated that testing up to 104 times a year is not supported by research. Further along in recovery, individuals do not require such frequent testing. Over-testing does not take into consideration any components of the program. Removal from practice, clinicians to determine what is adequate testing for each nurse. Current #4 standard does not take into consideration this data. Ms. Haggerty provided concept solutions, including clinical determination on scope and severity that should be considered when determining drug testing policy.

Ms. Haggerty stated that there are no individualized treatment plan under current policy. Instead, frequency and testing should be individualized.

Ms. Virginia Matthews: Clarified that as a vendor, MAXIMUS conducts diversion programs as contracted by the boards. She stated that she supported observed collections and random testing, but wanted to make committee aware of practical difficulties.

Kerry Parker: Introduced herself as executive director of the California Society of Addiction Medicine (CSAM). She has been executive director for 18 years, active in creation of physician wellness program. She explained that ideal programs would include an opportunity for physicians to self-report, with the goal of rehabilitating and eventually returning to work. Ms. Parker explained that CSAM attempted to assist MBC in designing such a program, but faced challenges because of the Uniform Standards and pushback from other stakeholders.

After these comments, Mr. Heppler asked the committee and the attendees to stay focused on looking forward how this committee may want to update or change the Uniform Standards.

Executive Officer Stephanie Nunez: Explained the difference between diversion and probation. Probation retains a more punitive approach, while diversion focuses on rehabilitation.

b. Disciplinary Proceedings and Probationary Terms and Conditions

Committee Counsel Kurt Heppler presented to the committee.

Mr. Heppler discussed the processes for boards that do not have a contracted diversion program. At the core, whenever boards exercise their regulatory, licensing, or disciplinary functions, public protection is paramount. Boards that are not using contracted diversion services generally use the probation process. The probation process relies on terms and conditions of set by statutory and regulatory frameworks.

Mr. Heppler presented data on boards that use the probation process. The data included numbers of probationers; individuals on probation due to substance-abuse; cease practice orders; license suspensions; successful completions.

There were no comments from members of the committee nor the public on this agenda item.

VI. Presentation on Recent Developments in Testing Research and Technology

Director Grafilo introduced Dr. Barry Lubin who serves as the medical director and medical review officer for Affinity Online Solutions, a platform for substance abuse monitoring. Dr. Lubin will be presenting on recent developments in testing research and technology.

Dr. Lubin discussed new changes in drug testing. Most laboratories today can test for any drug imaginable, from alcohol to bath salts, etc. The more sophisticated the drug is the higher the cost of the test.

For most substances, urine will yield a positive test result for 48-72 hours. But drug testing has gotten very sophisticated. New lab technique – confirmation testing called GCMS, can identify the fingerprint of any chemical; however, there are some limitations.

About seven or eight years ago, laboratories began using PEth. PEth binds to red blood cells, and has a testing window of 60-90 days by identifying the chemicals not excreted through urine. Dr. Lubin explained that every program he has worked with uses PEth on different levels.

In addition, hair testing technology has gotten better as well. Fingernail and toenail can also provide helpful test results, with fingernails going back up to six months and toenails reflecting back to at least one year. However, there are limitations

there as well. Hair and nail negative tests cannot prove abstinence; but a positive hair and nail test can. For example, a pharmacist can be tested positive on a nail test for oxycodone. But that's because pharmacists are not trained to wear gloves

Committee comments:

Committee member Herold inquired about rehabilitation programs in other states, and asked how California compared against other states.

Dr. Lubin acknowledged that California is ahead, particularly on the testing standards.

Committee Member Morris inquired about the use of blood tests. Dr. Lubin explained that blood tests are more invasive and costly. Alternative methods are more efficient. For example, alcohol abuse is detectable through urine test within 48-72 hours. It is helpful to vary the panels, as some programs don't test for all substances all the time. Varying panels is very valuable.

Public comment:

Julie D'Angelo Fellmeth: Ms. Fellmeth inquired if during the first year of recovery, there is a positive aspect to more frequent testing.

Dr. Lubin acknowledged that it is a positive, as testing is a powerful deterrent.

Lunch Break

Mr. Le reconvened the Substance Abuse Coordination Committee meeting at 1:00 p.m.

Ms. Bui conducted roll call.

Present:

- Benjamin Bodea
- Kim Madsen
- Robert Puleo
- Karen Fischer
- Rebecca Mitchell
- Heather Martin

- Angie Burton
- Jason Kaiser
- Antonette Sorrick
- Joseph Morris
- Stephanie Nunez
- Paul Sanchez
- Elaine Yamaguchi
- Michele Wong

Absent:

- Anthony Lum
- Kim Kirchmeyer
- Jessica Siefertman
- Virginia Herold
- Lynn Forsyth
- Brian Naslund
- Ethan Mathes

VII. Discussion and Consideration of Possible Changes to Uniform Standard #4

Representatives of the California Society for Addiction Medicine (CSAM) presented to the committee.

Dr. Miotto explained that CSAM has led a task force to review all the Uniform Standards. The task force was composed of experts, including clinicians who are involved in monitoring groups and panel of expert attorneys.

Dr. Miotto provided some statistics on drug detection.

Dr. Miotto provided an overview of two physician wellness programs, including HOPE and 24/7 Sobriety. These programs give offenders simple, transparent rules which encourages responsibility, learning, and a sense of fairness in addition to swift, certain, and modest contingencies in case of violation.

Dr. Miotto explained that effective programs include multiple interventions, such as clinical oversight, workplace awareness, workplace monitors and well as support groups.

Areas of #4 that require change are frequency of testing; randomicity; method of notice to the licensee; number of hours between the provision of notice and the test; specimens tested; standards and procedures for specimen collectors;

permissible locations of testing.

Dr. Skipper highlighted the importance of changing the standard; including that we cannot tolerate impaired professionals working in safety-sensitive positions.

Dr. Skipper provided an overview of one of the first programs for early detection, treatment and monitoring, including the FAA HIMS program for airline pilots. Dr. Skipper also worked with the Nuclear Regulatory Commission Safe Harbor Program.

Dr. Skipper provided an overview of what worked in other states: educating hospitals, medical and patient groups; accepting referrals and taking immediate action following confirmation of substance abuse; intervening and referring for thorough evaluation; requiring thorough and effective treatment; requiring extended monitoring and reporting to the regulatory agency any lack of cooperation that could lead to risk.

Dr. Skipper provided an overview of 20 steps to drug testing, ranging from signing of a detailed monitoring agreement, to provision of financial arrangements between collection site, participant, and lab, to review of all non-negative reports.

Dr. Skipper discussed the importance of having competent collection sites. Less than 20 percent of tests are observed in the way that would be deemed acceptable.

Dr. Miotto and Dr. Skipper discussed possible areas for modifications, including testing frequency; testing schedule; concurrently managing prescribed medication; collection sites; testing protocols and reporting times; and how to manage the advancing science of substance use monitoring.

After the presentation, Mr. Le reminded the committee of the two documents available for review related to this presentation: CSAM taskforce document outlining the possible changes to Uniform Standard #4 and ASAM's Consensus Statement.

Committee member discussion:

Committee member Madsen inquired about the various drug testing vendors currently in use by the various boards and bureaus, and would like to focus on the topics of frequency, access to testing site, cost, impact to work. In addition, if the committee was to re-examine Uniform Standard #4, that is should fold in current technology and any future technology.

Committee member Martin asked if it was possible to take pulse about whether committee wanted to change Uniform Standard #4 or not.

Committee member Sorrick asked if the Department of Consumer Affairs had any thoughts and recommendations for changes.

Mr. Le explained that the department deferred to the boards, as they are the one directly administering diversion and probation programs. The role of the department is to facilitate conversation and do the support work for the committee.

Committee member Nunez appreciated the various presentations, but expressed wanting more time to look at additional information and data. Particularly, would be interested in looking at other testing methods. For example, if hair and nail tests can go back so many months, why are we using urine?

Committee member Puleo discussed how the Uniform Standards were written with old technology. For his board's licensees, frequency is a problem. Mr. Puleo would be interested to see if there are tests that offer longer time windows, so there is less of a need to test as frequently. It would be helpful that testing frequency is determined by the program. Mr. Puleo was unsure if it was necessary to set frequency in regulation.

Committee member Mitchell would like to see more information on what ratio of Randomicity vs. frequency, and what combination thereof, would be most effective.

Committee member Burton stated that randomness is more important than frequency.

Committee Member Madsen appreciated the information on toe nail tests, and stated that she would like to see more information on testing standards, and what are effective combinations.

Mr. Le stated that it seemed like the committee was moving in the direction of changing Uniform Standard #4 but overall needed more information of specific topics.

Committee member Sorrick proposed to invite the drug testing vendors that boards use.

Committee member Martin stated that their board is very happy with their vendor. For example, vacation requests do not absolve of testing, but still provided options to users. Participant convenience and cost is an issue, but the priority is always consumer protection.

Mr. Le reminded the committee of the January 1, 2019 deadline to decide and report back to the legislature. Mr. Le reminded feel free to use staff for what kind of research need to be brought to the table.

Mr. Heppler asked the committee if there is any information the committee would like the department to bring back.

Committee member Puleo stated that convenience and consumer protection is not exclusive. If substance-abusing licensees are going to be hesitant to come forward, they are going to be practicing until they get caught. We need to compare mandatory vs. rehabilitative types of treatments.

Committee member Kaiser stated that the there is also a perception problem. How many probations were not able to test because a center wasn't open. Vacation is not an issue. Technology and frequency can be offset with the idea of lowering costs through advancing technology ensure consumer protection.

Mr. Le proposed that one option for the committee to consider, is that staff can work with stakeholders to create a first draft of changes to Uniform Standard #4, to get a head start.

Committee member Martin expressed that she'd prefer having more information collected and presented. Committee member Madsen agreed.

Committee member Madsen suggested inviting drug testing vendors and their medical directors.

Committee member Sorrick would like to look at the minimum number for frequency, and given new technology, whether the that number needs to be revised.

Committee member Sanchez stated that it may not be necessary to test someone 104 times a year.

Committee Member Kaiser wanted to have more information on the three burdens of proof used by the boards.

Public Comment:

Dr. Lubin: Clarified that negative hair or nail does not prove abstinence, and did not recommend stop using urine tests. These tests need to be used conjointly. Again, a diverse testing panel is ideal, and the committee should give clinical professionals the leeway to determine such panel.

Committee member Puleo asked if it be possible for a vendor to have a one charge per month, to determine cost over life.

Dr. Lubin said that it would be extremely difficult, as not everyone has the same disease; not everyone has the same drug of choice.

Mr. Heppler invited public comment to focus on whether Uniform Standard #4 should or should not be changed.

Kerry Parker: Strongly encouraged to move toward changing Uniform Standard #4. The experts have done a lot of work; proposed set of language and comparative document; and provided a side-by-side comparison. Ms. Parker encouraged for a motion for staff to bring draft recommendations and language, and reminded that CSAM has spearheaded a review of all 16 standards, with experts from around the country providing recommendations.

Dr. Skipper: Agreed with Committee member Puleo's comments, and encouraged the committee to think about public risk to programs not being thought of as supportive. Public perception is a really important factor. In addition, Dr. Skipper would like to see more involvement with the scientific community more regularly on this issue.

Julie D'angelo Fellmeth: Stated that CSAM's recommendations were not made publicly available, and that there was not copy of the PowerPoint available. Ms. Fellmeth requested that the department make all the PowerPoints used throughout the committee meeting available online in order for everyone to evaluate what was said today.

She commented that the original uniform standards were developed with clinical input. Ms. Fellmeth did not believe that the committee should be changing the

standards in any significant way without data and science. Ms. Fellmeth stated that she has not seen any data in standards #4 and #16. As the standards were finalized in 2011, boards should have filed at least five reports since then but have not seen any other than the Respiratory Care Board. Ms. Fellmeth reminded that Standard #16 requires boards to submit data.

Ms. Fellmeth stated that licensees who participate in diversion programs are not social drinkers or recreational users; they are confirmed users who have either admitted to or have been found to have abused substances. The only way to measure is to require sometimes intrusive testing. While not unsympathetic to costs, Ms. Fellmeth believed that current frequency standard is flexible, as Standard #4 would allow a board to use other testing methods. Testing flexibility is already built in. The standard has stood the test of time and should remain as is.

Committee member Nunez made a motion that the committee does not recommend making any changes to Uniform Standard #4.

Committee member Yamaguchi seconded the motion as courtesy.

Committee member Fischer clarified that the committee is only tasked with determining whether changes need to be made.

Committee member Madsen asked if there's a rush on having a decision made today. Ms. Madsen stated that it would be helpful to have some time to evaluate the issue a little more thoroughly, including time to speak with board members about it. If the committee makes a change or not, it needs to be very thoughtful.

Mr. Le stated that there was no rush, and that one of the paths available is to reconvene later and bring back the pertinent information needed for this committee to make a decision.

Mr. Heppler stated that there is a motion on the floor to not to change Uniform Standard #4 and opened the motion for public comment.

Dr. Carol Stanford: Explained that she was part of the original committee. Dr. Stanford applauded for what the committee was doing today.

Mr. Le clarified that if the motion passed, there would be no need for committee to meet again.

Anne Sodegren: Asked the committee for consideration that some executive officers are unavailable to be here, and would encourage that the committee delay such a vote until the committee members that wish to participate can.

Mr. Le called for a vote on the motion:

“The committee determines that no changes to Uniform Standard #4 is needed.”

The votes were one yes, 12 no, and the motion did not pass.

Mr. Heppler stated that there is list of things to bring back, including data collection and vendor presentations.

VIII. Future Meetings and Future Agenda Items

Mr. Le stated that staff will work with committee members for dates.

Committee member Sanchez stated that he would like to see the scientific evidence that was produced regarding frequency of testing that led to the current SB 1441 standards.

Committee member Sorrick requested for the executive office to put out a doodle poll. She stated that the more options, the better.

Committee member Madsen asked to avoid May.

Public comment:

Julie D'Angelo Fellmeth: Asked the committee if future meetings could be webcasted or if individuals could call in remotely.

IX. Adjournment

The meeting adjourned at 2:52 p.m.